

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN W. JONES, *et al.*,

Defendants.

Case No. 2:12-cr-00400-MMD-GWF

ORDER

This matter is before the undersigned on Defendant Thomas A. Cecrle, Jr's Motion to Reconsider the Order of Pretrial Detention (#58), filed on December 28, 2012. The Court also considered the Government's Response (#61), filed on January 14, 2013, and Defendant's Reply (#63), filed on January 22, 2013.

BACKGROUND

On October 24, 2012, Defendant Thomas A. Cecrle, Jr ("Cecrle") was indicted and charged in a twenty count indictment along with five other defendants. *See* Indictment #1. On November 2, 2012, Cecrle appeared before the undersigned for his initial appearance and detention hearing. The Government moved for pretrial detention based on risk of non-appearance and danger to the community. The Court considered the information set forth in the Government's proffer, the information submitted by Cecrle in response to the Government's proffer, and the information provided by the Office of Pretrial Services in reaching its determination on pretrial detention. Ultimately, the Court found that the Government met its burden by showing by clear and convincing evidence that Cecrle is a danger to the community and by preponderance of the evidence that he is a flight risk. *See* Order of Detention (#29). In reaching this conclusion, the Court noted:

The defendant lacks property, financial or employment ties to the community. The defendant's prior criminal history record reflects two prior felony convictions, eight prior misdemeanor convictions, seven prior failures to appear, and two probation violations or revocations. Additionally, the Pretrial Services Report indicates that the defendant frequently uses methamphetamine socially. The Court finds there are no conditions or combination of conditions that the Court could fashion at this time that would reasonably protect the community against the risk of danger posed by the defendant or assure the defendant's appearance at future court proceedings.

Id. Thus, Cercle was ordered detained pending trial.

By way of this motion, Cercle requests that the Court reopen the detention hearing pursuant to 18 U.S.C. § 3142(f) based on new information. In response, the Government argues that the detention hearing should not be reopened because the additional information provided by Cercle has not provided any new evidence that has a material bearing on the Court's decision.

DISCUSSION

Pursuant to 18 U.S.C. § 3142(f), the court may reopen a detention hearing at any time prior to trial if:

the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

Courts interpret this provision strictly. *E.g., United States v. Ward*, 63 F.Supp.2d 1203, 1206-07 (C.D. Cal. 1999); *United States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir. 1991).¹ The rule requires that the movant, whether prosecutor or defendant, establish: (1) that information now exists that was not known to the movant at the time of the initial detention hearing, and (2) the new information is material to release conditions regarding flight or dangerousness. *See United States v. Bowens*, 2007 WL 2220501 (D. Ariz.) (citing *United States v. Hare*, 873 F.2d 796 (5th Cir. 1989)). Generally, once a detention hearing is reopened, "it is reopened for the purpose of the court's receiving any information, within reason, not submitted at the original detention hearing." *United*

¹ The rationale for the rule is discussed in *United States v. Flores*, 856 F.Supp. 1400 (E.D. Cal. 1994). "There are very few proceedings in federal practice which encourage a party to be less than diligent in bringing forth all material evidence the first time a hearing is held . . . [a] rule that would not discourage a party for failing to acquire readily available evidence for presentation the first time is a rule that encourages piecemeal presentations. Judicial efficiency is not served by such a practice." *Flores*, 856 F.Supp at 1406.

1 *States v. Barksdale*, 2008 WL 2620380, n. 3 (E.D. Cal.). This allows new information to be
2 considered in context. *Id.*

3 The undersigned has reviewed Cecerle's motion and is not persuaded that the information
4 asserted in support of the motion is new and material. First, Cecerle provides information regarding
5 his residence to bolster his ties to the community. At the Detention Hearing, Cecerle informed the
6 Court that he was living in a rented condominium with his girlfriend, a co-defendant, and his
7 youngest daughter. He now provides the address of his oldest daughter, Brianne Cecerle, at 2925
8 Wigwam Pkway, Unit 1123, Henderson, Nevada, 89014. He contends that he would live with
9 Brianne and assist in caring for her one year old child. Alternatively, Cecerle requests that he may
10 be permitted to live with his ailing mother who suffers from the effects of Alzheimer's disease and
11 lives approximately five miles from his oldest daughter. Therefore, Cecerle argues that his close
12 relatives in the Las Vegas community are new evidence of strong community ties. In response, the
13 Government contends that none of this information was substantiated by an affidavit, it fails to
14 assert that his daughter or mother would serve as a third party custodian, and it is not new
15 information. The Court agrees that Cecerle knew of his family ties at the time of his initial
16 appearance and this information is not material to its determination.

17 In addition to the information regarding community ties, Cecerle submits that he is not an
18 economic danger to the community. Rather than detaining him to protect the community from such
19 concern, Cecerle asserts that a reasonable condition would be to prevent him from having any
20 contact with witnesses or alleged victims in this case and bar financial transactions utilized in the
21 charges at issue. In response, the Government contends that it performed a comprehensive
22 financial analysis of Cecerle's banking records that revealed that he has no known source of income
23 other than that derived from the fraudulent scheme charged in the indictment. Given the length of
24 the fraud, ten years, and absence of employment history, the Government contends that the Court's
25 assessment that Cecerle presents an economic danger to the community was justified. The Court
26 agrees that Cecerle has not provided any new and material information regarding his work history
27 that warrants changing its pretrial detention decision.

28 Finally, Cecerle contends that the Court's concern regarding his risk of non-appearance can

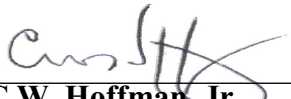
1 be adequately addressed by a condition of pretrial release. He contends that the nature of his prior
2 instances of non-appearance are distinct from the nature of this case because Cecrle has never been
3 alleged to have used false identifiers or identities. Additionally, Cecrle argues that given that the
4 earliest trial date is approximately eight months away and this is a complex case, the Court should
5 reconsider the propriety of pretrial detention. In response, the Government contends that there has
6 been no demand for speedy trial or request for earlier trial date. Additionally, the Government
7 alleges that Cecrle's demonstrated lack of regard for the judicial process justifies pretrial detention.
8 The Court is not convinced that there are conditions of pretrial release that will mitigate the risk of
9 flight based on Cecrle's criminal history.

10 Consequently, the Court is not convinced that the additional information provided by Cecrle
11 is material to the issue of his nonappearance at future court proceedings and danger to the
12 community. The undersigned's concerns regarding Wolfe's lack of property, financial, and
13 employment ties to the community remain. Therefore, the Court finds that the additional
14 information submitted by Cecrle does not have "a material bearing on the issue [of] whether there
15 are conditions of release that will reasonably assure the appearance of such person as required and
16 the safety of any other person and the community."

17 Based on the foregoing and good cause appearing therefore,

18 **IT IS HEREBY ORDERED** that Defendant Thomas A. Cecrle, Jr's Motion to Reconsider
19 the Order of Pretrial Detention (#58) is **denied**.

20 DATED this 11th day of February, 2013.

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24 **C.W. Hoffman, Jr.**
25 **United States Magistrate Judge**
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